

## PROPOSED CHANGES IN UTAH'S ANIMAL CRUELTY CODE - PART 1

(12/23/2002)

### 76-9-301 Cruelty to animals.

(1) A person is guilty of cruelty to animals if the person intentionally, knowingly, recklessly, or with criminal negligence:

- (a) fails to provide necessary food, care, or shelter for an animal in his custody;
- (b) abandons an animal in the person's custody;
- (c) transports or confines an animal in a cruel manner;
- (d) injures an animal;
- (e) cruelly sets upon or causes physical injury or trauma to an animal. ~~causes any animal, not including a dog, to fight with another animal of like kind for amusement or gain; or~~
- (f) ~~causes any animal, including a dog, to fight with a different kind of animal or creature for amusement or gain.~~

(2) A violation of Subsection (1) is:

- (a) a class B misdemeanor if committed intentionally or knowingly; and
- (b) a class C misdemeanor if committed recklessly or with criminal negligence.

(3) A person is guilty of aggravated cruelty to an animal if the person:

- (a) tortures, torments, causes serious physical injury, or mutilates an animal;
- (b) administers poison or poisonous substances to an animal without having a legal privilege to do so;
- (c) kills or causes to be killed an animal without having a legal privilege to do so.
- (d) causes or permits any animal, not including a dog, to fight with another animal of like kind for amusement or gain; or
- (e) causes or permits any animal, including a dog, to fight with a different kind of animal or creature for amusement or gain.

(4) A violation of Subsection (3) is:

- (a) ~~a class A misdemeanor~~ a third degree felony if committed intentionally or knowingly;
- (b) a class B A misdemeanor if committed recklessly; and
- (c) a class ~~C~~ B misdemeanor if committed with criminal negligence.

(5) It is a defense to prosecution under this section that the conduct of the actor towards the animal was:

- (a) by a licensed veterinarian using accepted veterinary practice;
- (b) directly related to bona fide experimentation for scientific research, provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved;
- (c) permitted under Section 18-1-3; (dogs chasing livestock)
- (d) by a person who humanely destroys any animal found suffering past recovery for any useful purpose; or
- (e) ~~by a person who humanely destroys any apparently abandoned animal found on the person's property.~~

(6) For purposes of Subsection (5)(d), before destroying the suffering animal, the person who is not the owner of the animal shall obtain:

- (a) the judgment of a veterinarian of the animal's nonrecoverable condition;
- (b) the judgment of two other persons called by the person to view the unrecoverable condition of

the animal in the person's presence;

(c) the consent from the owner of the animal to the destruction of the animal; or

(d) a reasonable conclusion that the animal's suffering is beyond recovery, through the person's own observation, if the person is in a location or circumstance where the person is unable to contact another person.

(7) This section does not affect or prohibit the raising or training, instruction, and grooming of animals, so long as the methods used are in accordance with accepted husbandry practices.

(8) (a) This section does not affect or prohibit the use of an electronic locating or training collar by the owner of an animal for the purpose of lawful animal training, lawful hunting practices, or protecting against loss of that animal.

(b) County and municipal governments may not prohibit the use of an electronic locating or training collar.

(9) Upon conviction under this section, the court may in its discretion, in addition to other penalties:

(a) order the defendant to be evaluated to determine the need for psychiatric or psychological counseling, to receive counseling as the court determines to be appropriate, and to pay the costs of the evaluation and counseling;

(b) require the defendant to forfeit any rights the defendant has to the animal subjected to a violation of this section and to repay the reasonable costs incurred by any person or agency in caring for each animal subjected to violation of this section;

(c) order the defendant to no longer possess or retain custody of any animal, as specified by the court, during the period of the defendant's probation or parole or other period as designated by the court; and

(d) order the animal to be placed for the purpose of adoption or care in the custody of a county and municipal animal control agency, an animal welfare agency registered with the state, sold at public auction, or humanely destroyed.

(10) This section does not prohibit the use of animals in lawful training.

(11) As used in this section:

(a) "Abandons" means to intentionally deposit, leave, or drop off any live animal:

(i) without providing for the care of that animal; or

(ii) in a situation where conditions present an immediate, direct, and serious threat to the life, safety, or health of the animal.

(b) (i) "Animal" means a live, nonhuman vertebrate creature.

(ii) "Animal" does not include animals kept or owned for agricultural purposes and cared for in accordance with accepted husbandry practices, animals used for rodeo purposes, and does not include protected and unprotected wildlife as defined in Section 23-13-2.

(c) "Custody" means ownership, possession, or control over an animal.

(d) "Legal privilege" means an act authorized by state law, including Division of Wildlife Resources statutes and rules, and conducted in conformance with local ordinances.

(e) "Necessary food, care, and shelter" means appropriate and essential food and other needs of the animal, including veterinary care, and adequate protection against extreme weather conditions.

(f) "Physical injury" means physical trauma, impairment of physical condition, or substantial pain.

(g) "Physical trauma" means fractures, cuts, punctures, bruises, burns, and other wounds.

(h) "Serious physical injury" means physical injury that creates a substantial risk of death or that

causes protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of a limb or bodily organ.

#### **76-9-301.7 Cruelty to Animals -- Enhanced Penalties.**

- (1) "Conviction" means a conviction by plea or by verdict.
- (2) A person who commits any violation of Section 76-9-301, Section 76-9-301.5, or Subsection 76-9-301.1(4) within the state and on at least one previous occasion has been convicted of violating Section 76-9-301, Section 76-9-301.5, or Subsection 76-9-301.1(4), shall be subject to an enhanced penalty as provided in Subsection (3).
- (3) The enhanced degree of offense for offenses committed under this section are:
  - (a) if the offense is a class C misdemeanor, it is a class B misdemeanor; ~~and~~
  - (b) if the offense is a class B misdemeanor, it is a class A misdemeanor; ~~and~~
  - (c) if the offense is a class A misdemeanor, it is a third degree felony.
- (4)(a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide written notice upon the information or indictment that the defendant is subject to an enhanced degree of offense or penalty under Subsection (3). The notice shall be served upon the defendant or his attorney not later than ten days prior to trial.
  - (b) If the notice is not included initially, the court may subsequently allow the prosecutor to amend the charging document to include the notice if the court finds:
    - (i) that the amended charging documents, including any statement of probable cause, provide notice that the defendant is subject to an enhanced penalty provided under this section; and
    - (ii) that the defendant has not otherwise been substantially prejudiced by the amendment.

#### **76-9-307. Injury to service animals -- Penalties.**

- (1) As used in this section:
  - (a) "Assistance animal" means an animal that is trained or is in training to:
    - (i) lead or guide a person who is blind or has a visual disability;
    - (ii) assist a person who has a physical disability, including hearing impairment or deafness; or
    - (iii) assist a person who has a mental disability.
  - (b) "Person with a disability" means a person who is blind, visually impaired, deaf, hearing impaired, or otherwise has a physical or mental disability.
- (2) It is a ~~class A misdemeanor~~ third degree felony for a person to knowingly, intentionally, or recklessly cause substantial bodily injury or death to an assistance animal.
- (3) It is a class A misdemeanor for a person who owns, keeps, harbors, or exercises control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient control over the animal to prevent it from causing:
  - (a) any substantial bodily injury or the death of an assistance animal; or
  - (b) the assistance animal's subsequent inability to function as an assistance animal as a result of the animal's attacking, chasing, or harassing the assistance animal.
- (4) It is a class B misdemeanor for a person to chase or harass an assistance animal.
- (5) It is a class B misdemeanor for a person who owns, keeps, harbors, or exercises control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient control over the animal to prevent it from chasing or harassing an assistance animal while it is carrying out its functions as an assistance animal, to the extent that the animal temporarily interferes with the assistance animal's

ability to carry out its functions.

(6) (a) An assistance animal is exempt from quarantine or other animal control ordinances if it bites any person while it is subject to an offense under Subsection (2), (3), (4), or (5).

(b) The owner of the assistance animal or the person with a disability whom the assistance animal serves shall make the animal available for examination at any reasonable time and shall notify the local health officer if the animal exhibits any abnormal behavior.

(7) In addition to any other penalty, a person convicted of any violation of this section is liable for restitution to the owner of the assistance animal or the person with disabilities whom the assistance animal serves for the replacement, training, and veterinary costs incurred as a result of the violation of this section.

(8) If the act committed under this section amounts to an offense subject to a greater penalty under another provision of Title 76, Utah Criminal Code, than is provided under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Helpful information:

76-5-103. Aggravated assault. (human)

- (1) A person commits aggravated assault if he commits assault as defined in Section 76-5-102 and he:
- (a) intentionally causes serious bodily injury to another; or
  - (b) under circumstances not amounting to a violation of Subsection (1)(a), uses a dangerous weapon as defined in Section 76-1-601 or other means or force likely to produce death or serious bodily injury.
- (2) A violation of Subsection (1)(a) is a second degree felony.
- (3) A violation of Subsection (1)(b) is a third degree felony.

18-1-3 Dogs attacking domestic animals, assistance animals, hoofed protected wildlife, or domestic fowls.

Any person may injure or kill a dog while it is attacking, chasing, or worrying any domestic animal having a commercial value, any assistance animal as defined in Section 78-20-101, or any species of hoofed protected wildlife, while attacking domestic fowls, or while the dog is being pursued thereafter.

76-2-103. Definitions.

A person engages in conduct:

- (1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.
- (2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.
- (3) Recklessly, or maliciously, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.
- (4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.